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OFFICE OF PETITIONS

In re Application of	:	
Edmund J. Balboni et al	:	
Application No. 10/679,023	:	DECISION ON PETITION
Filed: October 3, 2003	:	
Attorney Docket No. Analog.7150	:	

This is a decision on the petition under 37 CFR 1.181, filed March 29, 2007, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the final Office action mailed September 15, 2006, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment has not been mailed in this application.

Petitioner asserts that the Office action dated September 15, 2006 was not received. In support, petitioner has submitted a copy of the docket records for the months of October 2006, November 2006, December 2006 and March 2007 to demonstrate any due dates relating to correspondence from the USPTO having a mail date from September 2006 that were received.

The Office follows the guidelines set forth in MPEP § 711.03(c) (see also "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

The petition satisfies the above-stated requirements. While the petition does not contain the statement in item (3) above, the statements presented are being construed as meaning that "a search of the file jacket and docket records indicates that the Office action was not received." If this is an improper reading of the statements of nonreceipt made in the petition, petitioner must promptly inform the Office.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 2817 for re-mailing the Office action of September 15, 2006. The period for reply will run from the date of the re-mailing of the Office action.



Frances Hicks
Petitions Examiner
Office of Petitions